

Internal Revenue Service
memorandum

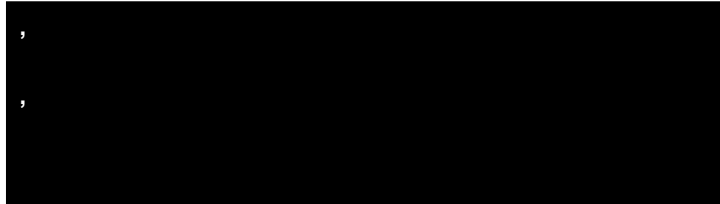
date: FEB - 1 1991

to: Director, Internal Revenue Service Center
Kansas City, MO
Attn: Entity Control

from: Technical Assistant
Employee Benefits and Exempt Organizations

subject: CC:EE:3 - TR-45-632-90
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter dated May 18, 1990, from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of the:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] became an employer within the meaning of Section 3231 of the Internal Revenue Code on [REDACTED], the date on which operations commenced. It should file Forms CT-1 and Forms 941-E for all open years.

(Signed) Ronald L. Moore

RONALD L. MOORE

Attachment: Copy of letter from
the Railroad Retirement Board

cc: Mr. Gary Kuper
Internal Revenue Service
200 South Hanley
Clayton, MO 63105

08608

UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 RUSH STREET
CHICAGO, ILLINOIS 60611

BUREAU OF LAW

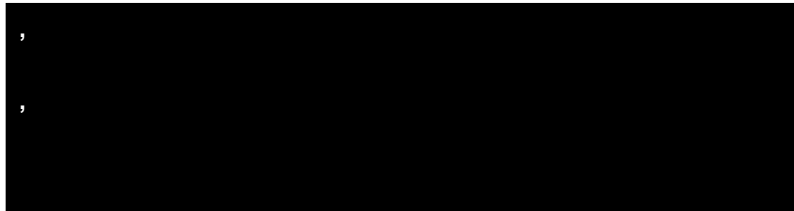
Assistant Chief Counsel
(Employee Benefits and
Exempt Organizations)
Internal Revenue Service
1111 Constitution Avenue., N.W.
Washington, D.C. 20224

MAY 18 1990

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,



Steven A. Bartholow
Deputy General Counsel

Enclosure

RECEIVED
90 MAY 24 AM 8:18
OFFICE OF THE ASSISTANT
CHIEF COUNSEL (EMPLOYEE
BENEFITS AND EXEMPT
ORGANIZATIONS) CC:EE

UNITED STATES GOVERNMENT

*Memorandum*RAILROAD RETIREMENT BOARD
[REDACTED]

MAY 11 1990

TO : Director of Research and Employment Accounts

FROM : Deputy General Counsel

SUBJECT: [REDACTED]
Employer Status

This is in response to your Form G-215 request for my opinion as to the status of [REDACTED] as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. The employer status of [REDACTED] has not previously been considered. Based on the following analysis and the evidence available in the file, I conclude that [REDACTED] became an employer under the Acts on [REDACTED].

The information upon which my opinion is based is that contained in an Internal Revenue Service report issued August 14, 1987, regarding coverage of [REDACTED] under the Railroad Retirement Tax Act for 1984, and a recent Tax Court opinion [REDACTED].

[REDACTED] regarding certain tax accounting issues pertaining to [REDACTED] in the years [REDACTED] through [REDACTED]. The Internal Revenue Service has held [REDACTED] to be an employer under the Railroad Retirement Tax Act, which determination is being contested by [REDACTED] after payment of a portion of its tax liability. The basis for the holding by the Internal Revenue Service is that [REDACTED] is under common ownership with the [REDACTED] conglomerate and performs rail-related services to rail affiliates. [REDACTED] itself has not submitted any information pertaining to its operations or corporate structure.

[REDACTED] was incorporated on or about [REDACTED]. During the period dealt with in the Tax Court opinion ([REDACTED] through [REDACTED]), that opinion found that [REDACTED] of its outstanding common stock was held by [REDACTED], a member of the [REDACTED] group and thus a company under common control with the [REDACTED], an employer under the Acts. The Internal Revenue Service report states that [REDACTED] is a wholly-owned subsidiary of [REDACTED], which is a holding company for the [REDACTED] and the [REDACTED], both rail carrier employers under the Railroad Retirement and Railroad Unemployment Insurance Acts. This apparent discrepancy may be attributable to the fact that the Tax

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Court opinion and the Internal Revenue Service report concerned different periods of time; in any case, whether there is or was an intervening company (i.e., [REDACTED]) holding the stock of [REDACTED] does not affect the coverage determination in this case.

According to the Internal Revenue Service report, [REDACTED] provides the rail companies with various types of leased equipment including railroad rolling stock, maintenance of way equipment, and automobiles. The IRS report states that [REDACTED] % of [REDACTED]'s business is done with the rail subsidiaries. The report also states that all of [REDACTED]'s [REDACTED] employees were solely engaged in providing service to the railroad industry.

According to the Tax Court's opinion, during the period from [REDACTED] through [REDACTED] [REDACTED] was engaged in leasing railroad rolling stock, railway roadway maintenance, automotive, aviation, communication, and other miscellaneous equipment. It is stated in the Tax Court's opinion that:

"During the years [REDACTED] through [REDACTED], [REDACTED] entered into [REDACTED] lease agreements with [REDACTED] relating to certain rolling stock, auto racks, automotive, communication, roadway maintenance, aviation and other equipment. During the years [REDACTED] through [REDACTED], [REDACTED] entered into [REDACTED] lease agreements with [REDACTED] relating to certain rolling stock, auto racks, locomotive engines and automotive, communication, roadway maintenance, aviation, electronic data processing and other equipment. * * *

"The lease agreements entered into by [REDACTED] with Related Lessees in the years [REDACTED] through [REDACTED] generally contained substantially similar terms and provisions which, except for minor modifications, were incorporated into the lease agreements in later years.

* * * * *

"During the years [REDACTED] through [REDACTED], [REDACTED] entered into the following lease agreements: (1) [REDACTED] lease agreements with [REDACTED] relating to locomotive engines, roadway maintenance, automotive and other equipment, (2) [REDACTED] lease agreements with the [REDACTED] relating to rolling stock, roadway maintenance, automotive, communications and other equipment, (3) [REDACTED] lease agreements with [REDACTED], an affiliated company] relating to certain automotive and other equipment, (4) [REDACTED] lease

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agreements with [REDACTED] relating to certain roadway maintenance and automotive equipment, (5) [REDACTED] lease agreements with [REDACTED], an affiliated company] relating to certain communications equipment, (6) [REDACTED] lease agreements with [REDACTED], an affiliated company] relating to certain roadway maintenance and communications equipment, (7) [REDACTED] lease agreements with [REDACTED], an affiliated company] relating to certain automotive equipment, (8) [REDACTED] lease agreements with [REDACTED] relating to certain automotive, communications and other equipment, (9) [REDACTED] lease agreements with [REDACTED] relating to certain automotive, roadway maintenance, communications and other equipment, (10) [REDACTED] lease agreements with [REDACTED] relating to certain automotive and other equipment, (11) [REDACTED] lease agreements with [REDACTED] relating to certain automotive equipment, and (12) a lease agreement with [REDACTED] U.S., a division of [REDACTED] relating to certain rolling stock.

"Generally, the terms and provisions of the lease agreements entered into by [REDACTED] during the years [REDACTED] through [REDACTED] were similar to the terms and conditions in the lease agreements executed during the years [REDACTED] through [REDACTED]. While variations in the lease agreements entered into during the years [REDACTED] through [REDACTED] existed, such variations reflected terms and condition existing in some of the lease agreements entered into the years [REDACTED] through [REDACTED]."

It is apparent from costs set forth in the Tax Court's opinion that during the period in question [REDACTED]'s investment in rolling stock and maintenance of way equipment greatly exceeded its investment in vehicular transportation equipment and other equipment. It also appears that [REDACTED]'s involvement with its affiliated carriers and other affiliated companies substantially exceeded its involvement with independent companies. It appears from the Internal Revenue Service report, which describes the same general organization and operations, that the description of the organization and operation of [REDACTED] for the period ending in [REDACTED] accurately described the organization and operation into [REDACTED], and it may reasonably be inferred that this description reflects the organization and operations into the present.

The definition of an employer contained in section 1(a) of the Railroad Retirement Act (45 U.S.C. § 231 (a)(1)) reads in part as follows:

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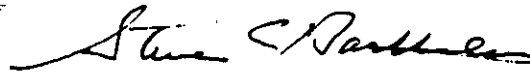
"The term 'employer' shall include--

"(i) any express company, sleeping car company, and carrier by railroad, subject to [the Interstate Commerce Act];

"(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *."

The Court in Standard Office Building v. United States, 819 F.2d 1371, 1373 (7th. Cir. 1987), stated that "Both Standard Office Building and Santa Fe Land Improvement are conceded to be under common ownership with the Atchison, Topeka and Santa Fe Railway [a carrier employer under the Railroad Retirement and Railroad Unemployment Insurance Acts], all being subsidiaries of Santa Fe Southern Pacific Corporation." The issue in that case, then, was whether there were services in connection with transportation by rail being performed by the subsidiaries of the Santa Fe Southern Pacific Corporation. The corporate relationships in the instant case are indistinguishable in any legally significant way from those described in Standard Office Building. Based upon the direct or indirect control of [REDACTED] by [REDACTED], which also controls the [REDACTED] and the [REDACTED]

it is my opinion that [REDACTED] is under common control with one or more employers under the Act. Accordingly, on the basis of the facts as set forth above, and in accord with the analysis of the Court in Standard Office Building, it is my opinion that [REDACTED] is an employer covered under the Railroad Retirement and Railroad Unemployment Insurance Acts, based on its being under common control with a railroad employer (the [REDACTED] and the [REDACTED] and the performance of substantial services for its rail affiliates, and that it became an employer on [REDACTED], the date on which it was incorporated and began to perform such services.



Steven A. Bartholow